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DECISION



L. P. Allen
**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D. C. 20548

FILE: B-189858

DATE: January 4, 1978

MATTER OF: Day's Cleaning Service

DIGEST:

Where alleged impropriety in solicitation is apparent prior to bid opening, but protest is not filed until twelve days after bid opening, protest is dismissed as untimely pursuant to 4 C.F.R. § 20.2(b)(1) (1977).

Day's Cleaning Service (Day's) protests the award of a contract to Space Services of Georgia, Inc. (Space), for janitorial services to be performed under a requirements-type contract at Fort Huachuca, Arizona.

The basis of the protest is as follows. The solicitation called for bids on twenty-four (24) separate line items. The estimated quantities for line items one through eighteen, inclusive, were for relatively firm currently anticipated requirements. The remaining line items, nineteen through twenty-four, were in the category of "on call" services, with the quantities being Government estimates based upon the experience of the Government during previous years, updated by reasonable projections for future years. Day's argues that inclusion of these "on call" services in the solicitation provides an unfair advantage to the incumbent firm. In its letter of August 12, 1977, Day's states in part:

"It is my feeling that the award of the contract should have been based upon the request for definite services which constitutes the greatest portion of the contract rather than the request for on-call services. My reasoning is that by the nature of the contract the incumbent firm is at a distinct advantage over its competitor since it knows from past experience just how much of the on-call services will be requested. Thus, the incumbent firm can underbid this section knowing that the amount stated in the bid proposal will not be requested."

B-189858

GAO's Bid Protest Procedures (4 C.F.R. part 20 (1977)) provide (at 4 C.F.R. § 20.2(b)(1)) that protests based upon alleged improprieties in any type of solicitation which are apparent prior to bid opening or the closing date for receipt of initial proposals shall be filed prior to bid opening or the closing date for initial proposals.

The bids were opened on August 4, 1977, award was made on August 8, 1977, and the protest was not received until August 16, 1977.

Upon receipt of the agency's report on October 17, 1977, and Day's rebuttal thereto on November 14, 1977, it became evident that Day's protest related to provisions of the solicitation and no protest had been lodged prior to bid opening. Furthermore, it is clear that the impropriety alleged by Day's (inclusion of the "on call" services in the solicitation) was apparent prior to bid opening. The "on call" services were plainly listed, and the method of evaluation was stated in the solicitation. Section D of the solicitation, entitled Evaluation Factors for Award, provided, "award will be made to the conforming responsible bidder submitting the lowest aggregate bid for the twelve (12) month period."

Accordingly, since the alleged impropriety was apparent prior to bid opening, but the protest was not filed until twelve days after, the protest of Day's Cleaning Service is dismissed as untimely.


Paul G. Dembling
General Counsel



R. Perkins
UNITED STATES GENERAL ACCOUNTING OFFICE
WASHINGTON, D.C. 20548



OFFICE OF GENERAL COUNSEL

IN REPLY
REFER TO:

B-189858

January 4, 1978

The Honorable Morris K. Udall
House of Representatives

Dear Mr. Udall:

We refer to your letter to our Office dated August 19, 1977, in regard to the protest of Day's Cleaning Service concerning the award of a contract under solicitation No. DAEA18-77-B-0089 issued by the Department of the Army.

By decision of today, copy enclosed, we have dismissed the protest.

Sincerely yours,

Paul G. Dembling
Paul G. Dembling
General Counsel

Enclosure



R Parker
122
UNITED STATES GENERAL ACCOUNTING OFFICE
WASHINGTON, D.C. 20548



OFFICE OF GENERAL COUNSEL

IN REPLY
REFER TO:

B-189858

January 4, 1978

Professional Services, Inc.
P.O. Box 1676
Las Cruces, New Mexico 88001

Attention: Fred Borunda
President

Gentlemen:

By letter dated October 28, 1977, we informed you that a copy of the Department of the Army's report on your protest filed with our Office under the above-referenced "B" number was being furnished to you by that agency. Our letter also stated that (1) the contracting agency recommended that your protest be denied, and (2) if you wished our Office to further consider the protest, you were required to submit within 10 working days either your written comments on the report or a written statement expressing your continued interest.

As of today, we have received neither your comments nor such a statement. Accordingly, we are closing our file in this matter without further action.

Sincerely yours,

Robert W. Parker
Attorney-Adviser



UNITED STATES GENERAL ACCOUNTING OFFICE
WASHINGTON, D.C. 20548



OFFICE OF GENERAL COUNSEL

IN REPLY
REFER TO. B-189856

January 4, 1978

Colonel C.T. Lakes, JAGC
Department of the Army
Office of the Judge Advocate General
Washington, D.C. 20310

Dear Colonel Lakes:

Enclosed is a copy of our letter of today to Professional Services, Inc. which closes our file on its protest regarding solicitation No. DAEA18-77-B-0089. As you will note, we are doing so without taking any action on the merits of the protest due to the protester's failure either to comment on your report or express a continued interest in having our Office consider the matter.

The file enclosed with your report to our Office is returned herewith.

Sincerely yours,

Robert W. Parker
Attorney-Adviser

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